

Amendment No. 1 to SB2244

Crowe
Signature of Sponsor

AMEND Senate Bill No. 2244

House Bill No. 1820*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 68-11-207, is amended by deleting subsection (b).

SECTION 2. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

68-11-276.

(a) The commissioner has the authority to suspend the admission of any new patients or residents to any facility or licensee in those cases where the commissioner has a factual basis upon which to believe that the conditions in any such facility or licensee are, or are likely to be, detrimental to the health, safety, or welfare of a patient or resident. For the purposes of this section, "facility or licensee" means any entity licensed under this part.

(b) The commissioner may suspend admissions pending a prompt hearing before the board, or an administrative judge if the board cannot be convened promptly.

(c) The commissioner shall initiate a suspension of admissions by delivering to the facility or licensee a notice stating the commissioner's decision to suspend the admissions of new patients. The commissioner's notice to suspend admissions must:

(1) Detail what conditions are considered detrimental to the health, safety, or welfare of the patients;

(2) Provide an explanation of the specific time frame when and conditions under which the facility or licensee can reasonably expect the suspension to be lifted; and

Amendment No. 1 to SB2244

Crowe
Signature of Sponsor

AMEND Senate Bill No. 2244

House Bill No. 1820*

(3) Be received by the facility or licensee within ten (10) business days of the conclusion of the department's survey.

(d) Within ten (10) business days of the conclusion of the department's investigation, the department shall also mail to the facility or licensee the commissioner's order, which shall:

(1) Detail the alleged facts and pertinent law with particularity; and

(2) Inform the facility or licensee of its right to contest the action.

(e) The commissioner's suspension of admissions shall take effect on the next calendar day following the order provided to the facility or licensee, as provided for in subsection (d).

(f) Any facility or licensee subject to a suspension of admissions by the commissioner has the right to contest the factual or legal basis for a suspension of admission imposed against it through a prompt contested case hearing before the board, or an administrative judge if the board cannot be convened promptly.

(g) All contested cases pursuant to subsection (f) shall be conducted according to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and shall be heard within thirty (30) days of the facility's or licensee's request for a contested case, unless otherwise agreed to by both parties.

(h) An order in all cases contesting a suspension of admissions shall be issued within ten (10) business days after the hearing contesting the suspension of admissions, regardless of whether the hearing is conducted before the board or an administrative judge. The order must determine whether the suspension of admissions was initially

valid and whether conditions at the facility or licensee continue to be detrimental to the health, safety, or welfare of a patient or resident to justify the continuation of the suspension of admissions if not previously lifted.

(i) The commissioner is authorized, at any time prior to a hearing, based on information presented to the commissioner showing that such conditions have been and will continue to remain corrected, to revoke the suspension of admissions.

(j) Within ten (10) days of receiving the commissioner's order to suspend admissions, any facility or licensee for which admissions have been suspended pursuant to this section shall submit a corrective action plan to the board delineating the measures to be taken to address violations and associated time frames. If it is deemed by the board to be necessary to ensure the health, safety, and welfare of patients or residents, the commissioner may require any facility or licensee for which admissions have been suspended to take all necessary actions to correct violations immediately. The board may also set a lesser time frame than ten (10) days for the facility or licensee to submit a corrective action plan when it deems necessary to ensure the health, safety, and welfare of residents.

(k) If the facility or licensee asserts that it has corrected the underlying conditions upon which the suspension of admissions is based, or if the facility or licensee complies with the conditions for the suspension to be lifted as set forth in the commissioner's order, the department shall verify such corrections, after receiving notice and evidence of such corrections from the facility or licensee, within fourteen (14) business days unless waived by the facility or licensee.

(l) Unless other specific conditions exist that warrant an additional suspension or continuation of the suspension of admissions, the commissioner shall promptly lift the suspension of admissions upon verification by the department that the facility or licensee has corrected the underlying conditions upon which the suspension of admissions is based or complied with the conditions for the suspension to be lifted.

(m) The board has the authority to:

- (1) Continue, revoke, or modify the suspension of admissions; and
- (2) Enter such other orders as it deems necessary.

(n) For any suspension of admissions of a nursing home under this section that is accompanied by a civil penalty under part 8 of this title, the provisions of part 8 shall control to the extent there is a conflict.

SECTION 3. Tennessee Code Annotated, Section 68-11-207(f)(1), is amended by deleting the language "in subsections (a)-(e)" and substituting instead "in subsections (a)-(e) and in § 68-11-276".

SECTION 4. Tennessee Code Annotated, Section 68-11-221, is amended by deleting the language "§ 68-11-207" and substituting instead "§ 68-11-276".

SECTION 5. Tennessee Code Annotated, Section 68-11-802(a), is amended by deleting the language "§ 68-11-207(b)" and substituting instead "§ 68-11-276".

SECTION 6. Tennessee Code Annotated, Section 68-11-812, is amended by deleting the language "§ 68-11-207(b)" wherever it appears and substituting instead "§ 68-11-276".

SECTION 7. Tennessee Code Annotated, Section 68-11-813(a), is amended by deleting the language "§ 68-11-207(b)" and substituting instead "§ 68-11-276".

SECTION 8. Tennessee Code Annotated, Section 68-11-830, is amended by deleting the language "§ 68-11-207(b)" wherever it appears and substituting instead "§ 68-11-276".

SECTION 9. Tennessee Code Annotated, Section 68-11-207(j), is amended by deleting the subsection and substituting instead the following:

(j)

(1) Homes for the aged, traumatic brain injury residential homes, assisted care living facilities, and adult care homes shall inform residents verbally and in writing of their right to file a complaint with the state at any time, the

process for filing a complaint, and contact information for filing a complaint. The facility shall also advise residents of the availability of a long-term care ombudsman and how to contact the ombudsman for assistance. Verbal and written communication to the resident must indicate, at a minimum, that complaints regarding suspected adult abuse, neglect, or exploitation must be reported to the adult protective services program. Complaints regarding licensure must be reported to the board. All other complaints must be reported to the appropriate state designated oversight entity. Complaints received by a home for the aged, traumatic brain injury residential home, assisted care living facility, or adult care home provider regarding suspected adult abuse, neglect, exploitation, or misappropriation must be forwarded to the appropriate state oversight entity.

(2) A facility licensed pursuant to this part shall not prohibit or discourage the filing of complaints or use intimidation against any person filing a complaint.

(3) A facility licensed pursuant to this part shall not retaliate against the resident or the person acting on behalf of the resident in any way. Such nonpermissible actions include, but are not limited to:

(A) Increasing charges;

(B) Decreasing services, rights, or privileges;

(C) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(D) Harassing, abusing, or threatening to harass or abuse a resident in any manner.

(4) Persons acting in good faith in filing a complaint are immune from any liability, civil or criminal.

(5) A facility licensed pursuant to this part shall place a resident manager, substitute caregiver, or employee against whom an allegation of

abuse, neglect, or exploitation has been made on administrative leave of absence until the investigation is complete.

(6) Investigations must be completed by the appropriate state oversight entity within time frames established in applicable statutes or regulations, or as expeditiously as necessary to ensure the health, safety, and welfare of residents.

(7) Board administrative staff shall maintain a file of reported complaints. The file must include the name of the facility against whom the complaint is filed, the date the complaint is filed, the action taken by the board, if any, on the complaint, and the date of the action taken.

SECTION 10. Tennessee Code Annotated, Sections 68-11-213(e), (f), and (g), are amended by deleting the subsections and substituting instead the following:

(e) If a determination is made by the department that a facility or entity is subject to the requirements of licensure under this part, a notice shall be issued by the department stating the determination and requiring that application for licensure must be made to the department within thirty (30) days of the receipt of that notice. The thirty-day application period does not serve to waive any civil penalties that may be assessed for unlicensed operation of a facility under this part.

(f) Failure of a facility or entity requiring licensure to make application to the department for licensure within thirty (30) days from the date of the receipt of the notice may result in the initiation of injunctive relief and any other relief available in law or equity against any person who owns, operates, manages, or participates in the management of facility or entity.

(g) In addition to requiring that a facility or entity make application for licensure, the department may immediately initiate a petition for injunctive relief or any other relief available in law or equity. The department may direct the facility or entity to immediately cease and desist operations when the health, safety, or welfare of the patients or residents requires emergency action. If the facility or entity does not comply with the

directive to cease and desist, then the department may initiate proceedings for injunctive relief and any other relief available in law or equity.

SECTION 11. Tennessee Code Annotated, Section 68-11-213, is amended by deleting the subdivisions (i)(1) and (i)(2) and substituting instead the following:

(1) The department may assess a civil penalty not to exceed five thousand dollars (\$5,000) against any person or entity operating an assisted care living facility, home for the aged, adult care home, or traumatic brain injury residential home without having the license required by this chapter. Each day of operation is a separate violation.

(2) The board for licensing health care facilities is authorized to establish as part of its comprehensive system of quality assurance and enforcement a system for assessing civil monetary penalties, including appropriate due process, for assisted care living facilities, homes for the aged, adult care homes, and traumatic brain injury residential homes that are in serious violation of state laws and regulations, resulting in endangerment to the health, safety, and welfare of residents.

SECTION 12. Tennessee Code Annotated, Section 68-11-213, is amended by adding the following as new subsections:

(k)

(1) After notification of deficiencies following a licensure or complaint survey, any facility licensed under this part has ten (10) days from the date of notification to submit an acceptable plan of correction. Should the facility submit a plan of correction that is deemed unacceptable by the department, then the facility has an additional ten (10) days from the date of notification that the plan of correction is unacceptable to submit an acceptable plan of correction. The department shall provide a facility with no less than three (3) opportunities to submit an acceptable plan of correction and provide clear guidelines so that the

facility understands what a plan of correction must include to be deemed acceptable.

(2) If a facility is not able to submit an acceptable plan of correction after three (3) attempts, then a representative from the facility shall appear before the board and submit a plan of correction for the board's approval.

(l) After receipt of an acceptable plan of correction, the department shall promptly revisit a facility or conduct an administrative review within fourteen (14) business days, unless waived by the facility or licensee, to determine whether the cited deficiencies have been corrected in accordance with the plan. If the same or different deficiencies are cited on the third revisit survey, then the department may pursue disciplinary action against the facility before the board, including seeking reimbursement for the unrecouped costs associated with subsequent revisit surveys that were incurred by the department.

SECTION 13. Tennessee Code Annotated, Section 68-11-1003, is amended by deleting subsection (b) and substituting instead the following:

(b) The department shall also include an individual's name on the registry when it receives a copy of a criminal disposition from the Tennessee bureau of investigation or another federal, state, or local law enforcement agency, court, or criminal justice agency indicating that a criminal disposition against the named individual was the result of an offense against a vulnerable person, but only if the copy of the court's criminal disposition order indicates that:

(1) The individual was notified that, as a consequence of the conviction, the individual will be placed on the abuse registry;

(2) The offense constitutes an offense against a vulnerable person; and

(3) The court has ordered placement on the abuse registry pursuant to this part and the clerk is required to forward such judgment to the department.

SECTION 14. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 15. This act shall take effect July 1, 2018, the public welfare requiring it.